

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : FRAME, Anne D.
Docket No. : 083622.00003
Application No. : 10/500,098
Filed : June 24, 2004
Group Art Unit : 1655
Examiner : LEITH, Patricia A.
Title : ANTI-BACTERIAL PLANT COMPOSITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705

Honorable Commissioner:

The Commissioner is hereby authorized to withdraw the fee due under 37 CFR 1.18(e) and any other fee due at this time in conjunction with this Request for Reconsideration of Patent Term Adjustment from our deposit account no. 50-1479.

REMARKS

The Notice of Allowance indicates the patent term is to be adjusted by 0 (zero) days. However, the Patent Term Adjustment History indicates the USPTO considers the USPTO to have delayed issue by a total of 363 days, while Applicant delayed issuance by a total of 247 days. Accepting these figures indicates the patent term should be extended by $363-247=116$ days. Please adjust the term on this basis by 116 days.

The Applicant has not reviewed the accuracy of determination of the USPTO delays, but focused on the accuracy of determination of the asserted Applicant delays. A number of errors appear to have occurred.

On June 24, 2008, the Applicant filed an amendment and arguments in response to an Office action ("OA") dated March 25, 2008. On July 8, 2008, the Applicant filed a Supplementary Response, correcting a spelling mistake on the amendment submitted on June 24, 2008. The Office mailed a Non-final rejection on July 22, 2008. The OA of July 22, 2008 did not address the failure to correct the spelling issue which was eventually addressed on July 28, 2008 Response and there was no follow up Supplemental OA issued to address the July 28, 2008 Response. Thus, under 37 C.F.R 1.704, paragraph 6, this is not a delay for which the Applicant has to pay in adjusted patent term. Alternatively, under 37 C.F.R 1.704, paragraphs 6, 7, or 8, the period is 14 days, not 15 days as calculated by the USPTO ('number

of days beginning on the day AFTER the initial response and ending on the day the supplemental response was filed'). Please adjust term on this basis by 15 days, or at least by 1 (one) day.

The Office mailed a Non-Final rejection on July 22, 2008. The Applicant timely filed a response on September 9, 2008. However, the Patent Term Adjustment History lists incorrectly the September 9, 2008 response as Amendment Crossed in Mail (presumably in reference to the Final Rejection issued on September 30, 2008. No Final Rejection would issue without a response to the non-final rejection; the designation of the September 9, 2008 response as crossed in the Mail is incorrect. The USPTO Patent Term Adjustment History starts counting Applicant delays days incorrectly on September 30, 2008 when the Final rejection was mailed. The error of mislabeled dates then continues perpetuating itself. The USPTO asserts a total of 29 days delay by Applicant, until January 28, 2009. However there were no delays, no crossed papers. Please adjust term on this basis by 29 days.

The next block of presumed Applicant delays are April 14, 2009, to September 11, 2009, but under 37 CFR, 1.704 that should be only 58 days. Please adjust term on this basis by 1 (one) day.

The Patent Term Adjustment History lists a block of 91 days as Applicant delays, starting on February 18, 2010 when a response was "forwarded to the Examiner," (34 days after the response was received). The days counted against the Applicant appear to relate to filing of IDS'. However, the IDS each were filed in a manner that excludes them from counting as delays under 37 C.F.R 1.704, paragraph 11. Please adjust term on this basis by 91 days.

Based on the cumulative observations above, the Applicant requests that a patent term extension of 116 + 15 (or at least 1) + 29 + 1 + 91 days, for a total of 252 days or at least by 248 days.

There are no Terminal Disclaimers in this patent.

Respectfully Submitted,

Date: August 27, 2010

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